

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STACY W. NIELSEN,

Defendant.

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CASE NO. 8:04CR151

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's motion to declare the United States Sentencing Guidelines unconstitutional (Filing No. 28). The Court has also considered the brief filed in support of the motion (Filing No. 29).

In light of the Eighth Circuit's recent decision vacating the decision in which the United States sentencing guidelines were found unconstitutional and the pendency of an *en banc* hearing to decide this issue, *United States v. Mooney*, No. 02-3388, 2004 WL 1636960 (8<sup>th</sup> Cir. July 23, 2004), *vacated, rhg. en banc granted*, (Aug. 6, 2004), the Court declines at this time to conclude that the federal sentencing guidelines are unconstitutional.

IT IS ORDERED that the Defendant's motion to declare the United States Sentencing Guidelines unconstitutional (Filing No. 28) is denied.

DATED this 1<sup>st</sup> day of October, 2004.

BY THE COURT:

s/Laurie Smith Camp  
Laurie Smith Camp  
United States District Judge